IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: March 08, 2010

Criminal Revision No. 306 of 2005 (O&M)

Kirpal Singh .....Petitioner

Versus

State of Punjab .....Respondent

Criminal Revision No. 307 of 2005 (O&M)

Major Singh .....Petitioner

Versus

State of Punjab .....Respondent

Coram: Hon'ble Mrs. Justice Sabina

Present: Mr.Gauttam Dutt, Advocate
for the petitioner.
Mr.Amandeep Singh Rai, Assistant Advocate General, Punjab

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Sabina, J.

Vide this order, the above-mentioned two revision petitions are being disposed of by a common order as they have arisen out of common judgment dated 3.2.2005 passed by the Additional Sessions Judge, Fast Track Court, Ferozepur.

Petitioners were convicted for an offence under Section 61 (1)(a) of the Punjab Excise Act, 1914 (`the Act' for short) vide judgment dated 6.10.2003 passed by the Judicial Magistrate Ist Class, Fazilka Vide order of even date, petitioners were sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- each under Section 61(1)(a) of the Act. Aggrieved by the same, petitioners preferred an appeal and the same was dismissed by the Additional Sessions Judge, Fast Track Court Ferozepur vide judgment dated 3.2.2005. Hence, the present revision petitions by the petitioners.

The brief facts of the case, as noticed by the Additional Sessions Judge, in paras 2 and 3 of its judgment, read as under:-

> "2. Briefly stated the case of prosecution before the Ld.Trial Court was that on 1.4.96 at about 4 AM ASI Rupinder Kumar alongwith other police party was holding Nakabandi at Trikoni Railway Crossing Roranwali. Accused Kirpal Singh and Major Singh came on Jeep No. RRC-1196 from the side of Mandi Roranwali. They were signalled to stop by the police party. Accused Kirpal Singh was driving the jeep whereas accused Major Singh was sitting on the rear seat of the jeep. The jeep was searched from which 28 cardboard cartoons containing 12 bottles each of the country made liquor mark-`Patiala Santra' and 6 cardboard cartoons containing 24 half bottles each of country made liquor mark `Patiala Santra' were recovered. The bottles were marked as mark-1 to 335 whereas the half bottles were marked as 337 to 418. The IO tried to join the independent witness but nobody was available there. The empty nips were

arranged. One nip of 180 Ml each from each of the bottles and halves were drawn as samples. The remaining liquor was allowed to remain in the same bottles and half bottles. All the sample nips and bottles were sealed by ASI Rupinder Kumar with his seal mark-RK. Separate sample of the seal was prepared and seal after use was handed over to constable Jagjit Singh. Both the accused could not produce any licence or permit for possessing and carrying the aforesaid country made liquor, due to which the whole of the case property, alongwith Jeep were taken into possession by preparing separate recovery memos. ASI Rupinder Kumar arrested both the accused at the spot. He sent ruqa to the police station and got an FIR registered against the accused U/s 61(1)(a) of the Act. At the spot he prepared personal search memos, recorded statements of the witnesses and also prepared site plan of the place of recovery. On return to the police station, he handed over the case property to the Malkhana Moharrar. After receipt of report of Chemical Examiner both the accused were challaned to face trial for their having committed offence punishable under Section 61(1)(a) of the Act.

3.After submission of the challan charge U/s 61(1)(a) of the Act was framed against both the accused by the Ld. Trial Magistrate to which they pleaded not guilty and claimed trial."

Learned counsel for the petitioners has submitted that the case property had not been produced in this case and, hence, the petitioners were liable to be acquitted.

After hearing the learned counsel for the parties, I am of the opinion that the instant petitions deserve to be allowed.

In the present case, prosecution had failed to produce the case property. Hence, the prosecution case is rendered doubtful. Prosecution was required to produce in the Court the alleged bottles of liquor recovered from the petitioners. Since, the prosecution had failed to do so, the accused-petitioners are liable to be acquitted

Accordingly, both the criminal revision petitions are allowed. The judgments of the Courts below dated 6.10.2003 and 3.2.2.005 are set aside. Petitioners are acquitted of the charge framed against them.

(Sabina)
Judge

March 08, 2010
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